IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

(1) Doshion Ltd. vs. The Rajasthan State Mines & Minerals Ltd. & Ors.
(S.B.Civil Writ Petition No. 3510/07)
(2)M/s. Tata Projects Ltd. Vs. The Rajasthan State Mines & Minerals Ltd. & Ors.
(S.B.Civil Writ Petition No. 6901/07)

Date of Order:- 23.11.2007.

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.M.S.Singhvi)
Mr. Manish Shishodia), for the petitioners.
Mr.M.R.Singhvi, for the respondents.

BY THE COURT:-

These two writ petitions relates to grant of the contract by the respondent Rajasthan State Mines and Minerals Limited(in short "RSMML" hereinafter) for setting up Desalination facility of 20 MLD of Brackish Water coming of the Lignite Mine at Matasukh, district Nagaur, Rajasthan. In response to a notice dated 31.7.06 inviting Expression of interest inter-alia the petitioners in these two writ petitions submitted the application expressing their interest for establishing the facility. Accordingly, a notice inviting tender was issued to them. After pre-bid meeting, the tenderors submitted their technical bid as well as price bid and also deposited the earnest money as required. Out of the bidders who submitted the bids , only two bidders -the petitioners herein, were considered eligible /suitable by the

respondent RSMML.

The petitioner Doshion Ltd. made certain deviations to the tender documents , therefore, it was invited to resolve the same. The representative of the company attended the meeting and after the discussion withdrew some of the possible deviations. However, RSMML directed the petitioner company to withdraw all the deviations in favour of the tender conditions and amendment thereof. Vide communication dated 7.5.07, the petitioner Doshion Ltd. was informed by the RSMML that they are going to load the financial bid of the petitioner according to their own assessment and then the determination of the lowest bid will be decided. In these circumstances, aggrieved by the said communication dated 7.5.07, the petitioner Doshion Ltd. preferred the writ petition (No.3510/2007) claiming various reliefs set out therein.

Since, the petitioner Doshion Ltd. refused to withdraw the deviations, therefore, it did not remain the lowest bidder and consequently, the letter of intent was issued by RSMML in favour of M/s . Tata Projects Ltd. Vide letter dated 4.8.07 and it was called upon to commence the project.

The validity of letter of intent dated 4.8.07 has been assailed by the petitioner M/s Tata Projects Ltd. by way of writ petition No.6901/07. It is prayed that communication dated 4.8.07 in so far as it directs the petitioner to execute the project

in question at price of Rs.41.63 per kilo liter be declared illegal and it may be declared that the letter of intent dated 4.8.07 is in terms of the offer given by the petitioner for executing the project in question at the price of Rs.44 per kilo liter. In the alternative, the petitioner M/s. Tata Projects Ltd. prayed that the respondent may reject the bid of the petitioner and in that event the earnest money deposited may be ordered to be refunded alongwith interest @ 18% per annum w.e.f. 3.3.07.

An application has been preferred on behalf of the respondent RSMML in the writ petition no.3510/07 stating therein that in the first instance the petitioner Doshion Ltd. had given in all 33 deviations and after amendment of the tender only 9 were retained, out of which 5 were further withdrawn at the time of the opening of the financial bid on 7.5.07. It is further stated that the remaining 4 deviations have also been withdrawn by the said company vide communication dated 27.10.07. Thus, after withdrawal of the deviation, the petitioner Doshion Ltd. has become the lowest bidder and M/s Tata Project Ltd. has ceased to be the lowest bidder. In this view of the matter, it is submitted that the RSMML intends to withdraw the letter of intent issued in favour of M/s Tata Projects Ltd. and wants to issue letter of intent in favour of the petitioner Doshion Ltd.

The prayer made in the application is not opposed by the

counsels appearing on behalf of M/s Doshion Ltd. and M/s Tata Projects Ltd. However, it is prayed by the learned counsel appearing on behalf of M/s Tata Projects Ltd. that in case of withdrawal of letter of intent issued in favour of M/s Tata Projects Ltd. , it is entitled for the refund of the earnest money forthwith.The learned counsel appearing on behalf of M/s Doshion Ltd. submits that the RSMML should be directed to issue the letter of intent within a reasonable period.

The prayers made on behalf of the petitioners are not opposed by the learned counsel appearing on behalf of RSMML.

Accordingly, with the agreement of the parties, both the writ petition are disposed of with the directions to the respondent RSMML :-

(i)that the earnest money deposited by the petitioner M/s Tata Projects Ltd. Shall be refunded to it;
(ii) a letter of intent may be issued in favour of the petitioner M/s. Doshion Ltd..

These directions shall be carried out within a period of two weeks from the date of this order. No order as to costs.

(SANGEET LODHA),J.